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The Solicitors' Journal

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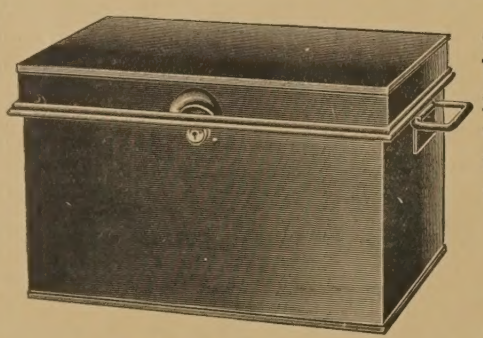

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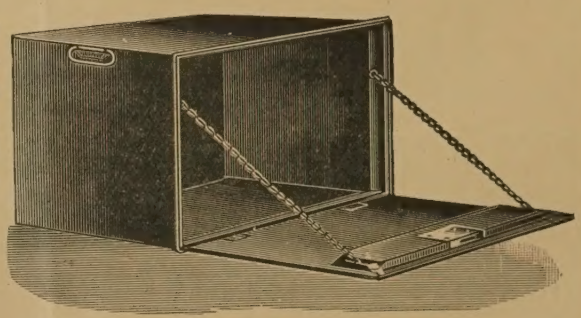

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*** Notices to Subscribers and Contributors will be found on page iii.

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Current Topics.

Evidence of Relations.

THE DECISION of the Court of Criminal Appeal in *Rex* v. *Lapworth* [1931] 1 K.B. 117, that where a husband is indicted for inflicting personal injury on his wife the wife is not only a competent but a compellable witness for the Crown, is the subject of further interesting notes in the current number of *The Law Quarterly Review*. In the first of these the observations of Lord Atkinson in *Leach* v. *Rex* [1912] A.C. 305, are recalled where he said: "I think the principle that a wife is not to be compelled to give evidence against her husband is deep-seated in the common law of this country, and I think, if it is to be overturned, it must be by a clear, definite and positive enactment, not by one so ambiguous as that relied upon in this case." That the principle has been overturned shows how far we have travelled from the days when there was wholesale exclusion of parties from the obligation, as we should call it, of giving evidence both in civil and criminal cases. Students of "Pickwick" will recall that, in the *cause célèbre* of *Bardell* v. *Pickwick*, neither of the parties was called to give evidence, and for the best of reasons, namely, that at that date parties were not competent witnesses. Professor WIGMORE, in his classic treatise on "The Law of Evidence," has the following passage which brings out very clearly the modern attitude of the courts on the question of the competence and compellability of witnesses: "Let us face the fact that when a party appears in a court of justice, charged with wrong or crime, the unavoidable and solemn business of the court and the law is to find out whether he has been guilty of the wrong or the crime; and that this high and solemn duty of doing justice and of establishing the truth is not to be obstructed by considerations of sentiment in this respect any more than in others." Curiously enough, while we have been tending strongly in this direction, and receding from the old position of rejecting the evidence of the interested parties, what we should now call the old prejudice that the evidence of those connected with the parties to a litigation or criminal proceedings must of necessity be so coloured as to be practically valueless, still survives on the Continent and in some countries is carried to a pitch which was never reached with us. By German law, for example, betrothed persons were, and we believe still are, for many purposes looked upon as already related, and so are placed in the same category as actual relations. Thus an affianced person, like an actual relation, may refuse to give evidence against his or her betrothed. We are not likely to approve of such a strange ground of exemption, but we have still not a few illogical rules of evidence which justify the suggestion made by one of the learned contributors to *The Law Quarterly Review* that it is time that a scientific reconsideration of the whole law of evidence were undertaken.

The Meaning of "British Legion."

EX-SERVICE MEN and others will welcome the judgment of FARWELL, J., in *British Legion* v. *British Legion Club (Street) Limited* (*The Times*, 14th July), to the effect that the use of the name "British Legion" denotes connexion with or supervision by the British Legion. The action was brought by the British Legion for an injunction to restrain the defendant company from using the words British Legion as part of its name or from representing by the use of the name that it was a branch of, or affiliated to, or in any way connected with, the British Legion. The report of the case stated that by the rules of the British Legion, which had been formed in 1921 and registered under the War Charities Act, 1916, and had been incorporated by Royal Charter in 1925, branches had been established both within and beyond the United Kingdom; and in many places clubs, supervised by the Legion headquarters, had been formed in connexion with the branches, but those clubs used the name "British Legion" subject to the Legion's right to revoke permission to use it. The defendant company, it was stated, was incorporated in 1921, and carried on at Street, in Somerset, a club which was in no way connected with the British Legion; but despite representations by the Legion the defendant company persisted in using the name. Apparently it was not disputed that its user of the name was *bonâ fide* and quite honest; but its memorandum and articles provided that its members were to be "ex-service men or others over twenty-one years of age"; and the undoubted fact remained that it had no connexion with the British Legion. Counsel for the defendant company stated that the difficulty in the way of obtaining the three-quarters' majority necessary to any change of name by the defendant company was that many of the members of the club were abroad; and it was also contended that the use of the words "British Legion" as part of its name was not really calculated to lead to confusion. FARWELL, J., however, took a different view and granted an injunction to restrain the use of the name "British Legion"; in so doing, however, he expressed the view that the defendant company was "no doubt a most excellent institution," and allowed it a period of two months within which to take the steps necessary to comply with the order of the court.

What "B.M.A." stands for.

It is a happy chance that two cases of importance and kindred interest have been in quick succession in the cause list and in the public eye. Following close upon the decision of Farwell, J., in *British Legion* v. *British Legion Club (Street) Limited* (*The Times*, 14th July) is the judgment of Maugham, J., in *British Medical Association* v. *Marsh* (*The Times*, 16th July), in which the learned judge prefaced his findings with a reference to the case before Farwell, J., as "an analogous case." In the case before Maugham, J., the British Medical Association asked for an injunction to restrain the defendant, a proprietor of drug stores, from representing that the drugs or medical or toilet preparations which he offered for sale were offered for sale by or on behalf of the plaintiffs, or from representing that he was carrying on business as a department of or in connexion with the plaintiffs, or from carrying on business or advertising or issuing to the public circulars under the name of the plaintiff association or the description "B.M.A." or "B.M.A. Drug Store." The allegation against the defendant was that at his stores he displayed signs, cards and posters bearing the letters "B.M.A.", that he exhibited and sold drugs and medical remedies in bottles and boxes with the letters "B.M.A." on them, and that his bills, labels and circulars not only contained the letters "B.M.A." and the phrase "B.M.A. Drug Stores" but even went so far as to refer to the British Medical Association by name. The defendant admitted the allegations, but denied that the letters "B.M.A." necessarily or exclusively denoted the British Medical Association and claimed that he was entitled to use them. Maugham, J., however, in a judgment which should hearten public bodies and other organisations whose names (or initials) are taken in vain by those who would abuse the prestige which those names carry, dealt summarily and faithfully with both denial and claim; and in granting the injunction he expressed the view that the defendant's conduct tended to injure the plaintiffs by causing members of the Association to leave it, and causing qualified practitioners who had not yet joined the Association to abstain from so doing.

Tort or Crime by Suggestion.

An evening newspaper has put to its readers a set of legal problems of some casuistry. It cites the case of a Paris moneylender, who is suing the municipal pawnshop authorities for damages. His plea is that, in reliance on a well-known custom that no more than one-fifth of its value is advanced on a pledge, he lent money on, so to speak, a second mortgage of a diamond necklace which a lady had pawned, but found to his dismay that the value of the necklace was not only less than five times the loan, but was even less than the loan itself, and so he lost all his money. The journalist asserts that no such action would lie in England, and no doubt he is right, for an English pawnbroker certainly does not undertake with the rest of the world that his advance on a pledge shall bear any particular proportion to its value. The general point raised is how far persons are responsible for the deductions which others may reasonably infer from their conduct. No doubt the divorce judges would like to know what to do with a respondent husband who, having stayed with a strange woman at an hotel and sent the bill to his wife, with the consequence that an inference of adultery is made against him, loudly boasts after the decree absolute that he just played beggar-my-neighbour with her all night. There is, of course, authority that if anyone tells a falsehood with the intention that another shall act upon it, and the latter is damnified thereby, an action of deceit will lie, although the offender may not benefit by his untruth, see *Pasley* v. *Freeman* (1789) 3 T.R. 51, a case which was applied in *Wilkinson* v. *Downton* [1897] 2 Q.B. 57, in respect of railway fares expended by the plaintiff, relying on the statement of the defendant, which was wholly untrue, but which he conceived to be humorous, that her husband had met with a serious accident. Whether, if A advised B to go to a place known by A but not by B to be dangerous, and B was injured or lost his life, B could be convicted of offence, is not an altogether easy proposition. Mr. E. F. Benson's book "The Luck of the Vails" turned on the efforts of an uncle to get rid of his young nephew in this way, by trying first of all to get him trapped in an ice-house, and then drowned by the bursting of a lake, when the young man tampered with the sluice at the end of it on the uncle's suggestion. The latter believed the dam would give way, and that was what happened, but the nephew just contrived to escape death by drowning. A suggestion by A, acted upon by B, that B should drink out of a bottle known to A, but not to B, to contain poison, and acted upon, would surely be murder if B died from the poison. Possibly, therefore, Mr. Benson's villain might have been prosecuted, though proof of his knowledge of the danger would have been exceedingly difficult to establish.

Shoplifting.

The big London shops are always afflicted with those who pick and steal. The shopkeepers employ their own detective staff and regularly fee solicitors. The whole machinery is rather expensive. The West-end courts have a very considerable burden in trying those of the offenders who are caught. The most distressing feature is that many of them are persons with decent relations—nearly all of them are women—and husbands and parents are often horrified to find their wives and daughters in the dock, having to answer charges of theft. There are other women who make a trade of shoplifting. One small shop in the neighbourhood of Oxford-street did, for a time, a flourishing trade on stock stolen almost entirely from one big shop, with girls making several trips daily to steal and selling their "catch" at ridiculous prices to the receiver, who had, in turn, many "bargains" to offer her customers. Still other women come in by cheap trips from provincial towns, Brighton and Portsmouth, even Exeter and Newcastle, going home with their spring or autumn outfit acquired by their own daring for nothing. This state of affairs is a very serious one. It is largely the fault of the shopkeepers themselves. Large quantities of easily portable property lie about ill-guarded. Often a legitimate purchaser waits unattended, idly turning over the goods. "Temptation," in the telling phrase of Mercier, "is the presentation of opportunity to desire," and opportunity is frequent and prolonged. In some cases it is the undoubted fact that desire has arisen there and then; the magnitude of the opportunity has led to a fall from grace. Such cases present a cruel dilemma to the courts. Is a married woman otherwise of good character, or a young girl suddenly tempted, to be sent to prison or dealt with lightly? On the one hand the small proportion of offenders detected offers a powerful argument for severity, and on the other, the duty not to crush the first offender presents itself. It is a difficult choice. Of course, wherever there is systematic offending, probation is entirely out of place, and there must be no yielding to the ridiculous suggestion that everyone is a first offender who has not previously been caught. Moreover, if imprisonment be decided upon, a few weeks' detention is not of much use. A sharp sentence is proper if there is to be sentence at all, and offers at least some hope of deterrence, both for that offender and others. But punishment is only the last element in the prevention of crime; certainty of detection counts for far more; and it is idle for the shopkeepers to complain of their large losses from shoplifting while they invite robbery by the display of pretty articles designed to make people buy more than they really want, so carelessly set out and unwatched as to present large opportunity to great desire.

The Land Value Tax.

By W. E. WILKINSON, LL.D. (Lond.)

I.—THE NATURE AND SCOPE OF THE TAX.

THE Finance Act, 1931, which received the Royal Assent on the 31st July last, is of more than ordinary interest to the profession, because Pt. III of the Act contains the much-discussed provisions relating to land value tax.

These provisions, which are contained in ss. 10 to 35 of the Act and in the 1st and 2nd Scheds. thereto, are difficult and complicated. Although the first valuation of land under the Act will not take place until next year and the first payment of tax will not be due until 1934, questions concerning the tax will arise in the near future. It is, therefore, necessary for lawyers—certainly for conveyancers—to understand the broad outlines of the new scheme of taxation.

Shortly stated, the Act imposes for the financial year ending the 31st March, 1934, and for each subsequent financial year, a land value tax at the rate of 1d. in the £ on the land value of every land unit (s. 10). There are, however, numerous exemptions and reliefs from the tax, which are set out in ss. 24 and 25 of the Act. Moreover, the provisions for the reduction of the land value contained in s. 19 and for recoupment of tax to leaseholders by lessors contained in s. 20 will have the effect of relieving the owners of most ordinary houses from payment of the tax. An owner is entitled to relief where the total amount of the tax payable does not exceed 10s. (s. 25 (3)), and the effect of the provisions of ss. 19 and 20 will, in the case of most ordinary houses, reduce the amount of tax payable to less than 10s.

Although the next article will deal with the valuation which is a necessary preliminary to the imposition of the tax, it may be well to point out that land is to be valued for the first valuation as at the 1st January next, that, with certain exceptions, every piece of land in separate occupation at the valuation date will be a "land unit" (s. 11 (3)), and that by the "land value" of a land unit is meant "the amount which the fee simple thereof with vacant possession might have been expected to realise upon a sale in the open market at the valuation date," if all buildings, etc., were removed and the land was free from incumbrances, except tithe, tithe rent-charge or other payment in lieu of tithe and the incumbrances mentioned in the 1st Sched. to the Act (s. 11 (1)).

The person chargeable with the tax will be the owner of the land unit. Shortly stated, by "owner" is meant *either* (1) the person entitled to a lease originally granted for a term exceeding fifty years which has commenced (or, if there are two or more such leases, the lease the term of which will first expire), *or* (2) where there is no such lease, the person seised of the land in fee simple (s. 31 (1)). It should be observed that in considering whether a person holding under a lease is the "owner" the test is not the length of the unexpired term, but whether the term of the lease as originally granted exceeded fifty years. Thus, the assignee of a ninety-nine years' lease which has, say, ten years to run, will be the "owner," but a lessee holding under a twenty-one years' lease will not.

Where the tax is charged on the lessee as owner, however, he will in many cases be able to obtain a recoupment of the whole or part of the tax from the lessor under the provisions of s. 20.

Exemptions and Reliefs.

No tax will be chargeable in respect of any land unit (not subject to a lease granted for a term exceeding fifty years which has commenced) for any period during which the unit—

(*a*) is owned by the Crown or by a Government Department;

(*b*) is owned by a local authority or drainage board;

(*c*) is owned by the National Trust;

(*d*) is owned by a public utility undertaking;

(*e*) is owned by a housing association prohibited by its constitution or rules from issuing any share or loan capital with interest or dividend at a rate exceeding 5 per cent. per annum, or such higher rate as may be prescribed by the Treasury;

(*f*) is owned by any persons (e.g., charities) entitled to claim in respect of the land unit or in respect of the rents or profits thereof exemption from income tax under Sched. A of the Income Tax Act, 1918, or allowance in respect of such tax;

(*g*) is owned by a registered friendly society (s. 24 (1)).

No tax will be chargeable in respect of a land unit for any period during which the unit—

(*a*) is used as a playing field, i.e., used mainly or exclusively for the purpose of open-air games or recreation *other than* horse racing, polo, coursing, dog racing, motor racing, or motor cycle racing;

(*b*) is used as a park, garden, or open space which is open to the public as of right;

(*c*) is used wholly or mainly for the purpose of public religious worship;

(*d*) is used as a churchyard or burial ground;

(*e*) is land which is a disused burial ground within the meaning of the Disused Burial Grounds Act, 1884, on which no building has been erected (s. 24 (2)).

No tax will be chargeable—

(*a*) in respect of any land unit for any period during which there is *neither* (1) a person who would be chargeable to the tax in respect thereof, *nor* (2) a person from whom any part of the tax would be recoverable under the provisions of the Act relating to the recoupment of tax to leaseholders by lessors, except a person who would be entitled to relief under s. 26 (1) or (2);

(*b*) where any land unit has no land value; or

(*c*) where agricultural land has no land value in excess of its agricultural value (s. 24 (3), (5)).

Relief from tax will be granted in the following cases:—

(1) Where the ownership of a land unit subject to one or more leases for a term exceeding fifty years which has commenced is such that the unit would have been exempt from tax under s. 24 (*supra*) if the unit, though in such ownership, had not been subject to any such lease as aforesaid, the owner will be entitled to relief from tax, except in so far as the tax is recoverable from the lessor under s. 20 (s. 25 (1)).

(2) Where the person from whom any part of the tax chargeable in respect of a land unit is recovered by a leaseholder under s. 20 is a person who, if he had been the owner of the unit, would have been entitled to relief or would not have been chargeable to tax, then as respects the tax so recovered from him, he will be entitled to relief as if he had been the owner (s. 25 (2)).

(3) If any person by whom the tax for any year is borne proves to the satisfaction of the Commissioners of Inland Revenue that the total amount of the tax for that year borne by him in respect of all land units (after allowing any sums recovered from lessors under s. 20 or by mortgagees under s. 21, or from beneficiaries under s. 22) does not exceed 10s., he will be entitled to relief from the tax for that year (s. 25 (3)).

Productions to Commissioners of Inland Revenue of Conveyances, Assignments and Leases.

It may be well to call attention to the provisions of s. 28 of the Act, as these provisions come into force on the 1st September next and affect the general practice of conveyancing. It is provided by s. 28 that on the occasion of (*a*) any transfer on sale of the fee simple of land, (*b*) the grant of any lease of land for a term of seven or more years, and (*c*) any

transfer on sale of any such lease, it will be the duty of the transferee, lessee or proposed lessee to produce to the Commissioners of Inland Revenue within thirty days after the execution thereof the instrument by means of which the transfer is effected or the lease granted or agreed to be granted, as the case may be, and also to furnish to the Commissioners at the option of the transferee, lessee or proposed lessee (*a*) particulars of the instrument, or (*b*) a copy thereof, or (*c*) such information as to the transfer or lease as may, within six months after the instrument is produced to the Commissioners, be required by them. If the person producing the instrument to the Commissioners does not furnish particulars or a copy thereof, he will be deemed to have elected to comply with (*c*) (2nd Sched.). The penalty for non-compliance is a fine not exceeding £10. No document so required to be produced will be deemed to be duly stamped unless it is stamped with a stamp denoting that it has been so produced. The section does not apply to any instrument which relates solely to incorporeal hereditaments or to a grave or right of burial, or which is a mining lease only or an instrument by means of which the transfer of a mining lease only is effected.

(*To be continued.*)

The Irish Society.

RECENTLY the Governor (Sir LOUIS NEWTON), the Deputy-Governor and members of the Visitation of The Honourable The Irish Society of London paid their annual visit to Londonderry and Coleraine, where the Society have held property and dispensed benefactions since the first "Plantation of Ulster," more than three centuries ago. During the visitation of the neighbourhood and its institutions, the Society entertained, as usual, a distinguished gathering at dinner in the Guildhall, Londonderry, and also at the Society's Schools, Coleraine, on the occasion of the annual prize-giving.

At the Guildhall dinner, on 22nd July, Sir LOUIS NEWTON, proposing the toast of "The Mayor and Corporation of Londonderry," referred to the Irish Society's recent decision to take over the responsibility for the maintenance and repair of the fabric of the historic walls and gates of Londonderry. The Society, he said, valued very much the connexion between Londonderry and London, and desired to facilitate, as far as lay in their power, any improvement undertaken in connexion with the city. The Mayor of Derry replied that the connexion between the Society and the corporation was a very old one, and "like good wine, it needed no bush."

The "Story of the Irish Society" is to be found in various publications, and has been well summarised under that title in a book printed for the Society in the tercentenary year 1913, and re-issued in 1921. That story forms a small, but highly interesting, part of the record of British Imperial development. It takes the reader back to the great colonising reign of JAMES I, and supplies him with an illustration of an early type of the machinery used for development purposes—the chartered company. The Irish Society came into being within a few years of the creation of other companies which are now only names. In 1599 a charter was granted to "the Governor and Company of Merchants of London trading into the East Indies," and this was renewed in 1609. In 1606 the North American or Virginia Company received from King JAMES a patent which granted them the whole of the North American shore lying between Canada and Florida. Indeed, nearly all the American colonies, and many in other parts of the Empire, were established by British chartered companies.

In this era of chartered companies the Irish Society had their origin. It is interesting to note, however, that the particular form of colonial development which was adopted in this case was derived from a far earlier precedent than any of the Jacobean charters. The essence of the Ulster project was that the money necessary for the plantation should be provided by the City of London. The citizens were, therefore, "invited by the Government to consider what Bristol had done for Dublin in the reign of HENRY II." This was a reference to the fact that, after the expulsion of the Danes, that King "granted to his men of Bristol his City of Dublin to inhabit and to hold of him, and of his heirs for ever, with all the liberties and free customs which his men of Bristol then enjoyed at Bristol, and through all England." This charter, subsequently confirmed by HENRY'S successors, gave to the City of Dublin and its inhabitants an impress which lasted down to the times when the Ulster Plantation was initiated. "It is resembled to Bristol, but falleth short," was said of Dublin by a visitor in the time of JAMES I.

The City of London, after much negotiation, was induced to undertake the adventure in the North of Ireland. The required sums, which eventually amounted to £60,000 or more, were raised by levy on the city companies on the basis of their corn rate assessments. The first step in the constitution was taken in 1610, when the city, by act of Common Council, ordained that "for the purpose of conducting the said Plantation, a Company should be constituted and established within the City of London, which should consist of one Governor, one Deputy-Governor, and twenty-four Assistants; and that the Governor and five of the said Assistants should be Aldermen of the City of London; and the Recorder of the City should likewise be one of the same Assistants; and the Deputy and the rest of the Assistants should be Commoners of the same City."

In 1613 this company was incorporated by Royal Charter by the name of "The Society of the Governor and Assistants of London of the New Plantation in Ulster within the Realm of Ireland." The Society retain at the present day the constitution adopted for the company in 1610, and the title given by the Charter of 1613. The charter itself was revoked in 1637, but a promise, subsequently given by CHARLES I, to restore the Society's rights was eventually fulfilled in 1662, by the grant of a new charter confirming (with very little alteration) the Society in all the possessions and rights granted by the Charter of 1613.

Though the constitution of the Irish Society has remained unchanged, their functions gradually ceased to be governmental and approximated to those of trustees for charitable or philanthropic purposes. The municipal government of the Plantation was provided for by incorporating the Town of Coleraine (1613) and the City of Derry (1621). The County of Londonderry, created by the Society's first charter, came in the course of time under the same form of government as other counties in Ireland—the grand jury and, since 1898, the county council. Until the latter year, it is true, the Society retained a relic of their colonising past in the right to have submitted to them, for approval, the bye-laws of the corporations of Londonderry and Coleraine. To-day, the function of the Society is to manage their property and to apply the income thereof for the benefit of the inhabitants of the Plantation area. This they continue to do by directly furthering education; by benefactions for public purposes, such as the building of the Guildhall at Londonderry, the freeing of its bridge from tolls and the maintenance of the walls, and by contributing to various organisations for the relief of distress and the encouragement of adult education.

Mr. George Frederick Johnson, solicitor, Huddersfield, senior partner in the firm of Messrs. Johnson & Crook, solicitors, Market-place, Huddersfield, and a member of the Huddersfield Law Society, left estate of the gross value of £4,690, with net personalty £4,631.

THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

A READING

Delivered before the Honourable Society of the Middle Temple, on 11th June, 1931,

BY

Sir CECIL HURST, G.C.M.G., K.C.B., LL.D. (Hon.), LL.M.,
Judge of the Permanent Court of International Justice; Lent Reader, 1931.

THE TREASURER, SIR ALFRED TOBIN, IN THE CHAIR.

(*Continued from page* 481.)

As regards the jurisdiction of the Court, the most important point to bear in mind is that it is an international tribunal. From this circumstance various important consequences flow.

The first is that the Court enjoys jurisdiction only as between states: no private person can be a party to a case before the Court.

"*Only states or members of the League*"—says Art. 34 of the Statute—"*can be parties in cases before the Court.*"

The inclusion of the words "members of the League" is due to the desire that no question should arise as to the position of the British Dominions and India and as to their right to be parties to a case before the Court. In 1920, when the Statute was framed, the dominions were only just emerging into the international sphere, and it was not certain whether they were entitled to be regarded as states. There was no doubt whatever, however, that they were members of the League, and the wording of Art. 34 ensures their right to sue and be sued before the Court.

Even the great international administrative unions—such as the Postal Union at Berne—have no *locus standi* as parties before the Court. The only recognition which is made of their existence is that when the Court is exercising its advisory jurisdiction, notice of the request made to the Court for an advisory opinion is given to any international organisation which may be likely to be able to furnish information on the question.

In 1929, when a committee was at work considering whether any improvements might be introduced into the Statute of the Court, the question was discussed at length whether the League of Nations itself should not be allowed to be a party to a suit. The suggestion was ultimately discarded. If the League of Nations were allowed to be a party to a case before the Court, it would be difficult to prevent it, in certain classes of cases such as those relating to the enforcement of mandates or the protection of minorities, from tending to develop into something in the nature of a super-state, an entity superior to the individual state which was also concerned in the litigation. In the long run this would be fatal to the authority and to the utility of the League.

The second consequence, that flows from the fact that the Court is an international tribunal exercising jurisdiction between states, is that it can exercise jurisdiction only by consent. A state is an independent and sovereign unit, and over it no outside body can exercise authority unless the state has agreed to its doing so. Consequently the jurisdiction of the Court in every case must be traceable to some act expressing the consent of the state or states concerned.

The courts of justice in our own country and in every country owe their origin and their power to the sovereign authority imposing and enforcing its will on all parties. As inhabitants of the country where we live we are subject, whether we like it or not, to the authority of the courts. Behind that authority lies the whole force of the state. It is not so with the Court of International Justice at The Hague, and you will find that at every turn the fact that there is no jurisdiction except by consent affects the position and procedure of the Court. It is true that states can agree—and in many cases have agreed—in advance to accept the jurisdiction of the Court, and have thereby subjected themselves to what is called its obligatory jurisdiction; but in every case you will find that the jurisdiction of the Court goes no further than the limits of what the state has by its own act consented to.

A third consequence that flows from the fact that the Court exercises jurisdiction only between states is that the Court can apply only the law which obtains between states; that is to say, that except where it is dealing with a case which turns on the meaning or application of a treaty, where the business of the Court is merely to interpret the treaty, the Court applies international law. The Court cannot apply or enforce the municipal law of an individual state.

In the majority of cases which have come before the Court there has been no difficulty as to the law to be applied. The decision has usually turned on the interpretation of a treaty, but it is well to bear in mind that in no case would the Court be qualified to interpret the meaning of a national enactment.

The work of the Court falls into two groups. The exercise of the contentious jurisdiction, that is to say, the giving of decisions in disputes which are referred to the Court by the states which are parties to the dispute; and the advisory jurisdiction, that is to say, the function imposed upon the Court of giving advisory opinions in cases referred to it by the Assembly or the Council of the League.

The contentious jurisdiction again may be sub-divided into two groups: cases where the dispute is brought before the Court by a special agreement—commonly called a "compromis"—between the states which are parties to the dispute for the reference of the case to the Court, and secondly, cases where a state, by some previous agreement which is binding upon it, has pledged itself to accept the jurisdiction of the Court if proceedings against it are instituted by some other state. Of recent years, as will be seen shortly, such agreements have become very common, and it may well be that in future most of the disputes submitted to the Court will be instituted by unilateral action of this kind.

Where two states make a special agreement to refer a dispute to the Court, it is customary to insert in the agreement any special provisions which the parties desire should operate in the handling of the case.

It seems, however, that the liberty which the parties enjoy in this respect is not unlimited. The Court is bound to act in conformity with the stipulations of its charter, the Statute of the Court, and the parties to a dispute cannot, by an agreement between themselves, authorise it—still less can they oblige it—to violate its own charter. This became clear in the dispute between France and Switzerland relating to the Free Zones of Upper Savoy and the Pays de Gex. The special agreement in that case invited the Court, after hearing the arguments of the parties, to communicate its opinion on a particular point to them, without making it public, the intention being that, after receiving the Court's decision, the two states should have an opportunity of negotiating a settlement of the dispute without being hampered on either side by an excited public opinion. The Court declined to give an opinion otherwise than in public. The point on which it was asked to do so was a legal question which went to the root of the disagreement

between the two countries, and however convenient it might have been to the parties that the Court should give a decision on the point in secret, it seemed to the Court to be contrary to the spirit of the Statute, which, in Article 58, states specifically that a judgment shall be read in open court. The Court was set up by an act of the general body of states, and it is natural, therefore, that the Statute should prevail, and that two individual states, by an arrangement between themselves, should not be at liberty to set it on one side.

In pre-war days the conclusion of a special agreement was the only method by which a case could be referred to an international tribunal. There was no other method by which the members of the tribunal could be appointed, and there were many other points which had to be provided for: their pay, their place of meeting, the question they were to decide, etc. From the moment when a Court was set up with a complement of judges and a fixed procedure, an *ad hoc* agreement for each dispute was no longer essential. It became possible for states to conclude agreements providing for the submission to the Court of disputes before they had arisen, by the simple expedient of pledging themselves to submit to the jurisdiction of the Court in any case covered by the agreement in which the other contracting party instituted proceedings. A situation was, in fact, reached in which the Court could become seised of a dispute by one state alone, by a process very like the issue of a writ. The only element in this situation which was essential, in order to give the Court jurisdiction, was the agreement previously made by the state and still binding upon it, wide enough in its terms to cover the point at issue in the particular case, and obligating it to submit to the jurisdiction of the Court.

The number of treaties which have been concluded containing stipulations of this kind is reaching formidable proportions. It is said to amount to something like 600.

These treaties may be divided roughly into two classes; firstly, those whose main purpose is the submission of disputes to a tribunal for decision in order to ensure a peaceful settlement. Where the dispute is legal in character the tribunal chosen is now usually the Court at The Hague; secondly, treaties which contain a stipulation to the effect that any dispute between the parties to the treaty as to the interpretation or application of the provisions of that particular treaty, shall be referred to the Court for decision. In treaties or conventions relating to technical matters, particularly in those negotiated under the auspices of the League of Nations, it is becoming almost a regular custom to insert a stipulation of this kind.

Of the first group—treaties providing for the reference to the Court of disputes in general—the most important is the Optional Clause which the Government of this country accepted in 1929. The "Optional Clause" figured so largely in popular discussion at that time that it may be useful if I explain briefly the origin and effect of this instrument.

The scheme for the establishment of the Court, formulated by the Committee of Lawyers in 1920, was so framed as to impose upon every state which became a party to the instrument setting up the Court the obligation to accept its jurisdiction as compulsory in the classes of disputes which the terms of Article 13 of the Covenant of the League characterised as *generally* suitable for arbitration or judicial settlement—that is to say, speaking broadly, all categories of legal disputes.

To be continued.

Mr. C. T. C. Lewis, solicitor, Beckenham, Kent, and Bedford-row, W.C., left estate of the gross value of £14,980, with net personalty of £12,274. There is a reversionary bequest of the ultimate residue to the British Museum, to be applied in the purchase of prints, or otherwise, in such a way as will encourage and stimulate interest in ancient and/or modern printing and/or engraving in colour, including therein prints of George Baxter, colour printer, and his imitators.

Company Law and Practice.

LXXXIX.

(*Continued from p.* 519.)

REDUCTION OF CAPITAL.—II.

ANOTHER, and a more difficult question, which not infrequently arises in connexion with reduction of capital, is that of reserves. In *Re Barrow Hæmatite Steel Co.* [1900] 2 Ch. 846, and [1901] 2 Ch. 746, which we were here considering last week, the company had a substantial reserve account, which it proposed to ignore for the purpose of ascertaining how much capital was unrepresented by available assets.

COZENS HARDY, J., deals with this point very shortly in his judgment at p. 854, where he says: "I can see no answer to the argument that the £40,000 (which was the amount shown to the credit of the reserve account) ought to have been treated as an available asset. So far as I am aware, this is the first instance in which a company possessing a large reserve fund has sought to reduce capital without taking account of the reserve fund." From there it may be convenient to pass for a moment to a passage in the judgment of the same learned judge, then COZENS HARDY, L.J., in *Re Hoare & Co. Limited and Reduced* [1904], 2 Ch. 208, where he amplifies his observations quoted above as to reserve funds. "I desire," he says at p. 218, "to say one word about the case of *Re Barrow Hæmatite Steel Co.* . . . In that case the reserve fund had not been taken into account at all. It was blended with the other assets, but not taken account of at all. I do not think that I meant to say more than this, that in considering the loss of capital, you must have regard to the fact that the assets include a reserve fund, but not separately invested." It is perhaps, somewhat misleading to make use of the expression reserve fund in this connexion, because where it is not separately invested, but is merely an entry on one side of the balance sheet which, along with the other entries on the liabilities side, balances the entries on the assets side, it is really a reserve account, because it is impossible to put one's finger on any particular asset or assets, and say "that represents reserve."

What was in the learned judge's mind will perhaps be clearer on an examination of *Re Hoare & Co.*, to which I will turn in a moment. The Court of Appeal, in supporting the decision of COZENS HARDY, J., in the *Barrow Hæmatite Case*, refused to deal with the point as to the reserves there raised.

The articles of association in *Re Hoare & Co., supra*, empowered the directors to create a reserve fund out of profits, and to employ the same in the business without being bound to keep it separate from the other assets. This was done, and, subsequently, when a valuation disclosed a large capital loss arising by reason of the depreciation in the value of the company's public houses, the company proposed to reduce its capital and to attribute to such reserve more than its rateable proportion, and to the capital account less than its rateable proportion, of the loss. BUCKLEY, J., refused to sanction the scheme on the ground that the whole of the reserve fund ought to be taken into account in ascertaining the amount of loss to be written off.

The Court of Appeal reversed this decision, and sanctioned the reduction. The judgments are illuminating, and will repay a careful study by anyone interested. It is laid down by ROMER and VAUGHAN WILLIAMS, L.JJ., that where a company has formed a reserve fund by taking assets, and setting them wholly apart from the other assets of the company, and if such reserve fund is formed out of funds which might, at the time of setting them aside, have been properly applied in payment of dividends, and is still available for the payment of dividends, such reserve fund is not a capital asset. These were not the facts in *Re Hoare & Co.*, where the reserve fund was, as it had been in the *Barrow Hæmatite Case*, mixed with the other assets of the company. The Court

of Appeal in *Re Hoare & Co.* decided that the loss ought to be apportioned rateably between the share capital and the reserve fund, and that, as the apportionment proposed was on the right side, in the sense that it attributed more than its due proportion to the reserve, the reduction ought to be sanctioned.

This decision is not one which in any sense precludes a company, in a proper case, from writing a loss off capital, and retaining a reserve fund; the decision is grounded purely on what is or is not the proper way of managing the affairs of companies, with particular reference, of course, to the affairs of the company there under consideration. This is clear from the judgments of ROMER and VAUGHAN WILLIAMS, L.JJ. The former says, at p. 214, "What ought to be done with regard to the loss? Ought it to be attributed wholly to the capital account, or wholly to the reserve fund, or ought it to be treated as apportioned? In my opinion, under the circumstances of this case, the loss ought to be treated as apportioned between the reserve fund and the capital account properly so called—that is, the share capital." The latter says, at p. 217, "Supposing, for instance, there had been no scheme for reduction at all, what could the company have done? Could they have distributed this sum as a dividend? Theoretically I think they could. But ought they to do so? I think not. Then, as I understand, our conclusion in the present case is that what, as commercial men managing a commercial undertaking, ought to be done is to distribute the loss in proportion to the figures of the share capital and the reserve fund."

Thus, in this case, the scheme for reduction was approved because it disclosed that what was being done was a prudent way of conducting the affairs of the company; and at first sight this might be said to be at variance with the well-known principle that the court will not interfere with the domestic affairs of a company, but the court has a discretion as to whether or not it will sanction a reduction, and in exercising that discretion it will take into account such factors as it considers material. Thus it is impossible to lay down any hard and fast rule as to writing loss off reserves, but it will be seen that it is not essential, in every case, to write off reserves before touching the share capital.

(*To be continued.*)

A Conveyancer's Diary.

The Statutory Power of Advancement.

Last week I considered *Re Stimpson's Trusts* [1931] 2 Ch. 77, but left off without having quite finished with it.

It will be remembered that the case turned upon the construction of s. 32 of the T.A., 1925, read with s. 28 (1) of the L.P.A., 1925.

The former section is concerned entirely with giving powers of advancement to trustees, but limits the power as follows:—

> "This section applies only where the trust property consists of money or securities or of property held upon trust for sale calling in and conversion and such money or securities or the proceeds of such sale calling in and conversion are not by statute or in equity considered as land or applicable as capital money for the purposes of the Settled Land Act, 1925."

The latter provision (s. 28 (1) of the L.P.A.), to put it shortly, enacts (in the first paragraph) that trustees for sale shall have "all the powers of a tenant for life and the trustees of a settlement under the Settled Land Act, 1925."

The contention put forward in *Re Stimpson* was that as trustees for sale have all the powers of a tenant for life under the S.L.A., the proceeds of sale are thereby made "applicable as capital money for the purposes of the S.L.A.," and consequently advancements cannot be made out of such moneys under the power conferred by s. 32 of the T.A.

I must say that the first paragraph of s. 28 (1) has always rather puzzled me. After providing that trustees for sale are to have all the powers of a tenant for life and trustees of a settlement, it proceeds to enact that "all capital money arising under the said powers shall unless paid or applied for any purpose authorised by the Settled Land Act, 1925, be applicable in the same manner as if the money represented proceeds of sale arising under the trust for sale."

In dealing with this section, Luxmoore, J., said: "The section does not provide that the money arising under a trust for sale is to be considered as money applicable under the Settled Land Act, 1925, or anything of the kind; all it provides is that money arising under the powers conferred on the trustees by that section shall, unless paid or applied for any purpose authorised by the Settled Land Act, be 'applicable in the same manner as if the money represented proceeds of sale arising under the trust for sale'—thus drawing a clear distinction between money arising under a trust for sale and money arising under the powers conferred on the trustees by that section."

I take it that the view of the learned judge was this—that, by s. 28 (1), trustees for sale have additional powers conferred on them by reference to the powers conferred on a tenant for life and trustees of a settlement under the S.L.A., and that if in the exercise of these powers money comes to their hands which does not represent proceeds of sale, that money is to be applied as if it were proceeds of sale, unless it is applied in a manner authorised by the S.L.A. in relation to capital money.

It would appear that the latter part of the first paragraph of s. 28 (1) does not apply to money arising under the trust for sale, but only to money which may arise as a result of the exercise of the additional powers conferred by the sub-section.

It might be, for example, that in exercising the powers of management conferred upon a tenant for life under the S.L.A. money might come to the hands of the trustees, say, from a tenant surrendering a lease and making a payment in settlement of a claim under a covenant to repair. The money so paid, or at any rate some part of it, would represent capital money and would under the sub-section be held upon the same trusts as money arising under the trust for sale.

There are other examples which might be given, but that will suffice to show the construction put upon s. 28 (1) by the learned judge in *Re Stimpson*.

I am bound to say that I think that construction to be the most sensible and reasonable one that can be put upon the sub-section and have no doubt that it will be adopted in future cases.

There is, however, a matter of some practical importance which I indicated last week and must try to elucidate, if I can.

I said that the result of the judgment in *Re Stimpson* might be that trustees for sale have no power to invest in land. I did not express any view on that point, but mentioned it because, from what I have read and heard, there seems to be an impression that such was the necessary implication arising from the decision.

I do not think that there is any ground for saying that the judgment in *Re Stimpson* has any such effect.

In the first place, it must be remembered that the decision turned only upon the construction of s. 32 of the T.A., 1925, which deals, and only deals, with powers of advancement. If the proceeds of sale of land held on trust for sale were "applicable as capital money for the purposes of the S.L.A., 1925," then no advancement could be made. The learned judge held that the proceeds of sale were not so applicable, and therefore advances might be made. I am at present not able to see how that affects the provision in the first paragraph of s. 28 (1) of the L.P.A. that trustees for sale shall have not

only in relation to the land, but also to the proceeds of sale, all the powers of a tenant for life and the trustees of a settlement, which powers do not include any power of advancement.

It seems to me that the second paragraph of s. 28 (1) makes the matter plain:—

"All land acquired under this sub-section shall be conveyed to the trustees on trust for sale."

It is, therefore, clear that the sub-section contemplates the acquisition of land by trustees for sale under their additional powers.

Now, there are only two ways that I can think of at the moment in which trustees for sale could acquire land under the powers conferred by the sub-section. The one is by exchange and the other by purchase. A tenant for life has power to exchange, trustees of a settlement have power to invest in land. It seems to follow that trustees for sale have similar powers, although the proceeds of sale may not be "applicable as capital money for the purposes of the S.L.A., 1925," within the meaning of s. 32 of the T.A., 1925.

In short, I think that the decision in *Re Stimpson* must be confined to the matter with which it deals—namely, the power of trustees for sale to make advancements under s. 32 of the T.A., and has no such repercussion as has been suggested.

Landlord and Tenant Notebook.

Retrospect—I.

The first edition of Woodfall's "Law of Landlord and Tenant" appeared in 1802. A century later, the seventeenth edition was published, edited (as had been several of its predecessors) by the late Mr. J. M. Lely; and the learned editor concluded the preliminary matter with a summary setting forth thirteen "Defects in the Law," which might, as he said in his preface, perhaps with advantage be brought before Parliament.

Text-book writers in general frequently criticise the law they expound, and it is to Mr. Lely's credit that the arrangement he adopted so clearly separated statements of the law as it was from expressions of his opinion of what it should be. Practitioners in general find that the pursuit of knowledge as to what the law is leaves them but little time in which to meditate on what it might be. But comparison of the law as it is, with the law as it was, is another matter, and may be essential for an intelligent understanding of the subject. I therefore propose to use Mr. Lely's summary of 1902 as a convenient means of reviewing some of the changes effected during the present century. In so doing, I do not necessarily associate myself with his opinion; similarly, the question whether any changes effected by Parliament in its wisdom constitute improvements must be left open.

The first complaint made related to the Statutes of Forcible Entry, which "greatly needed consolidation and amendment," and "perhaps pressed too hardly on landlords." The statutes have not been consolidated or amended; but three decisions to the effect that a forcible entry would give rise to an action for damages were overruled by the Court of Appeal in *Hemmings and Wife* v. *Stoke Poges Golf Club* [1920] 1 K.B. 720, C.A. In his judgment, Bankes, L.J., referred to the remarkable difference of judicial opinion which had existed on this point; to the "curious career" of *Newton* v. *Harland* (1840), 1 Sc. N.R. 474 (the leading case, and one of three alluded to), which, though never expressly overruled, had been "treated to a chorus of disapproval both from judges and from text writers." So if Parliament has done nothing, the judiciary has brought about some clarification.

Next, the summary demanded the prohibition of the "vicious and absurd system of granting leases for the lives other than those of the tenants themselves." This matter has been attended to: by the L.P.A., 1925, s. 149 (6), such a grant now creates a lease for ninety years determinable after the death of the lessee by a month's notice to quit, expiring on the next quarter-day of the tenancy, if any, or failing that, on the next usual quarter-day.

The doubt as to whether a sealed lease must be signed, which is the subject of the third paragraph, has been resolved by the L.P.A., s. 73; signature is essential.

The next three points relate to the liabilities of certain involuntary assignees of the term, and to one right of assignees generally. The personal representative who enters into possession is still liable personally and without limitation as regards obligations other than that to pay rent, as established in *Tremeere* v. *Morison* (1834), 3 L.J., C.P. 260, and his right has not been superseded by a liability up to assets only, as proposed by Mr. Lely. The changes effected by the T.A., 1925, s. 26 (verbally amended by the L.P.A., 1926, Sched.), only improve the position of a personal representative who does not enter but gets rid of the term, by extending the class to whom he may assign with that effect. Nor has the personal liability of a non-disclaiming trustee in bankruptcy been so superseded: *Titterton* v. *Cooper* (1882), 9 Q.B.D. 473, remains good law. And the power of an assignee to free himself from future liability by assigning to a pauper (*Onslow* v. *Corrie* (1817), 2 Madd. 330) has not been interfered with.

Mr. Lely went on to deplore the "curious distinction" in statutory insurance law that an insuring tenant was bound, but an insuring landlord was not bound, to expend insurance money in rebuilding: *Leeds* v. *Cheetham* (1827), 1 Sim. 146. Here again I must report "no change."

The eighth paragraph of the summary called for a thorough overhaul of the power of seizing one man's goods for another man's debts, "so severely and justly denounced by Lord Blackburn in *Lyons* v. *Elliott* (1876), 1 Q.B.D. 210." I cannot say whether the Law of Distress Amendment Act, 1908, would be thought to have effected a thorough overhaul, but it would have helped the plaintiff in the case cited, whose property was to have been sold by auction in the house of an impecunious tenant, but was seized by the landlord instead. The exceptions in the statute are, of course, of importance. There is also the Agricultural Holdings Act, 1923, s. 35 (s. 29 of the 1908 Act), conferring absolute privilege on machinery and on cattle present for breeding purposes not the property of the tenant, and extending conditional privilege to agisted cattle.

Our County Court Letter.

GARNISHOR'S RIGHTS AGAINST DEPOSIT ACCOUNT.

In *Alfred Powell & Sons, Ltd.* v. *Heap; Barclays Bank, Ltd., garnishees*, recently heard at Stourbridge County Court, the plaintiffs had obtained judgment for £35 8s. 6d. at West Bromwich County Court, and the defendant subsequently admitted having £15 3s. to her credit at the Stourbridge branch of the garnishees. The latter resisted the order on the grounds that the amount was on deposit, subject to the conditions that withdrawal should only take place (1) after fourteen days' notice, and (2) on personal application and production of the deposit book. It was admitted that these terms had not always been observed, as the account had been reduced from £150 by withdrawals without notice, but the right to enforce the conditions had always been reserved. Upon service of the garnishee summons the customer had been asked to give notice of withdrawal, but she had refused—her case being that she was a widow with three children (one of whom was consumptive), and she wished to reserve the amount for him. The plaintiffs' case was that, owing to the waiver of the above conditions, the money was not now held on deposit, but on current account, and could therefore be garnisheed. His Honour Judge Roope Reeve, K.C., held that money held on deposit account, not only subject to notice but also to personal attendance, could not

be garnisheed, and the summons was therefore dismissed, with costs. It is to be noted that the garnishee is merely summoned to show cause why he should not be ordered to pay "the amount of the debts due and owing and accruing from him" to the defendant, and the judgment is for the payment of "the debts found due." It follows that money held on deposit account is neither due nor owing, and cannot be a debt found due, until compliance with the conditions upon which the amount will be payable to the customer. In *N. Joachimson* v. *Swiss Bank Corporation* [1921] 3 K.B. 110, it was held that money held even on current account is not repayable prior to a demand, but service of a garnishee order *nisi* was stated by Lord Justice Bankes (at p. 121) to be a sufficient demand by operation of law, and the present Lords Warrington and Atkin concurred with this view, at pp. 126 and 131, respectively.

HUSBAND'S LIABILITY FOR WIFE'S DEBTS.

In *Fozard* v. *Swindell*, recently heard at Leeds County Court, the claim was for £13 15s. as the price of a carpet which had been sold and delivered in August, 1930. On behalf of the plaintiff, the defendant's wife stated that, although his salary was about £3 5s. a week, she was only allowed 10s. a week for housekeeping, and she had therefore taken in lodgers. The defendant's case was that, having been served with another summons in March, 1930, he had forbidden his wife to pledge his credit, and she had told him the carpet was a present from her parents. He had originally allowed her £2 a week, but (on moving to a larger house to take in lodgers) he had increased the allowance to £1 a week for rent and 30s. for housekeeping. His Honour Judge Woodcock, K.C., rejected the wife's statement that she was only allowed 10s. a week, and accepted the defendant's evidence as to the first summons. Judgment was therefore given for the defendant with costs. Compare a "County Court Letter" under the above title in our issue of the 6th December, 1930 (74 Sol. J. 813).

Practice Notes.

REASONABLE FITNESS FOR HUMAN HABITATION.

(*Continued from* 75 Sol. J. 356.)

II.

A tenant who vacates the premises (after deciding the above question in his own favour) may be unable to recover the cost of removal, as shown by the recent case of *Portlock* v. *Dames* at Cirencester County Court. The plaintiff had been engaged as a chauffeur-gardener at a wage of 35s. a week with a free cottage and coal, and he had agreed to move with the defendant to Faversham, Kent, on the terms that the plaintiff should be provided with a flat over a stable, provided no horses were kept. On investigating the proposed accommodation, however, the plaintiff found that there was (1) a horse in the stable and a manure heap near the house; (2) a sink in the living room; (3) no larder or cupboard. The defendant was notified that the house was damp and that the kitchen range was in a bad state, but, as nothing was done at the end of two days, the plaintiff (and his wife) returned to Gloucestershire and claimed £15 for cost of removal, and damages for failure to obtain another situation. The defendant's son-in-law stated that, being the lessee of the premises at Faversham, he had tried to arrange matters, but the plaintiff had refused to recognise him as the agent of the defendant, who was aged eighty-two and in delicate health. The horse had been removed by its owner on the day the plaintiff arrived, and all the plaintiff's requirements would have been met if only he had continued in his lodgings for two more days while the work was done. The present occupier of the flat (an employee of the defendant) gave evidence as to its having been rendered habitable, and His Honour Judge Kennedy, K.C., held that a reasonable man would have waited for his complaints to be remedied, so as to remain in the defendant's employment. There was, therefore, no breach of contract, and judgment was given for the defendant, who did not ask for costs.

DAMAGE FROM DEFECTIVE GAS FITTINGS.

In *Goodall* v. *Sudbury Gas and Coke Company*, recently heard at Sudbury County Court, the claim was for £50 as damages for negligence. The defendants had installed certain gas fittings in the house of the plaintiff, who, while dozing in an arm chair, was awakened by a blow on the head. It was found that the super-heater of a three-light incandescent burner had fallen through the glass bowl under the pendant, causing damage to the extent of £5, on a fire insurance basis. The plaintiff's medical expenses were £2 2s. but the shock had caused insomnia, necessitating a sea voyage on medical advice. The defendants' case was that (1) the work had been carefully done, but the accident was due to the constant pulling of the chain actuating the lever for turning the gas on and off; (2) the only damage consisted of small scorches on the chair, rug and polished floor. His Honour Judge Hildesley, K.C., gave judgment for the plaintiff for £42 2s. and costs.

THE CONSTITUENTS OF FRAUDULENT PREFERENCE.

(*Continued from* 75 Sol. J. 306.)

III.

In the recent case of *In re C. and T. Higton*, at Sheffield County Court, the trustees applied for (1) a declaration that a payment of £1,150 from C. Higton to the Midland Bank, in January, 1930, was fraudulent and void; and (2) an order against the bankrupt's mother for the return of the deeds of a certain house or the equivalent value. The applicant's case was that (*a*) the firm, since 1927, had had an overdraft secured by the deeds, which had been entrusted to C. Higton by his mother; (*b*) the firm became bankrupt early in 1930, and C. Higton (the managing partner) had died in May, 1930; (*c*) an agreement was made (prior to the bankruptcy) for the release of the deeds conditional upon a reduction in the overdraft from £3,000 to £2,000; (*d*) on receipt of a cheque for £1,150 for building work from the corporation, C. Higton had paid this to the bank in return for the deeds, which he had restored to his mother. His Honour Judge Greene, K.C., held that the debtor was aware of his insolvency, and had acted on his own initiative, without any specific request from his mother. The money had been paid to the bank, however, with the object of releasing the deeds, and so freeing the other respondent from a difficult position. The motion was therefore dismissed with costs. Compare *Bills* v. *Smith* (1865), 13 W.R. 407.

Correspondence.

"Canadian Divorces."

Sir,—Referring to the paragraph "Canadian Divorces" in your issue of 27th June, there appears this statement: "Presumably the divorces across the border are recognised by Canadian courts, which, if so, must be considerably more complaisant than ours in the matter of waiving domicil, or finding a change of it even though the respondent stays in Canada, and the petitioner leaves Reno when his or her purpose is accomplished." This is not so. The English rule that the jurisdiction to grant a divorce depends on the domicil of the parties is followed in Canada, and the domicil of the wife is during coverture that of her husband. Residence which, in respect of intended permanence, falls short of the residence required for establishing a true domicil in the international sense, will not suffice to give jurisdiction to

decree divorce, and domicil in Canada, but not in the particular province in which divorce by judicial process is sought, is not sufficient to give jurisdiction to the courts of that province: see *Attorney-General Alberta* v. *Cook* [1926] A.C. 444; (P.C.) *Nelson* v. *Nelson* [1930] 3 D.L.R. 522 (Sask.); *Breen* v. *Breen* [1929] 4 D.L.R. 649 (Man.); *C.* v. *C.* [1917] 38 O.L.R. 481, 39 O.L.R. 571 (Ont.); *R.* v. *Brinkley* [1907] 14 O.L.R. 434 (Ont.), a conviction for bigamy following the husband's second marriage after the first wife had obtained a Michigan divorce.

No doubt the increase in divorces in the province of Ontario is, in part, due to the fact that the Supreme Court of Ontario has recently acquired jurisdiction to grant them. Formerly a person domiciled in Ontario had to obtain a divorce by a private Act of the Dominion Parliament always at great inconvenience and expense. But the facility of divorce procedure is not the moving cause of the increase of divorces here as well as elsewhere. It is the changed attitude throughout the world towards marriage and divorce and is evidence of the gradual decline of the importance of the family as an integral social unit.

ERIC ARMOUR,
Crown Attorney, Toronto.

The Crown Attorney for the City of
Toronto and the County of York,
City Hall, Toronto 2.
17th July.

[We are much obliged to Mr. Armour for his interesting observations on our note. Our contributor no doubt sought to find a good reason for so many extra-territorial divorces in Canada. Mr. Armour disposes of his suggestion, but it is somewhat puzzling why, if these divorces are entirely unrecognised in Canada, and the parties to them commit bigamy if they re-marry, so many should take the trouble to obtain them.—ED., *Sol. J.*]

Probate Engrossments.

Sir,—Experience has shown that where an engrossment copy of a will is required to be lodged in the Principal Probate Registry in connexion with the photostat process, there appears to be some doubt as to the form in which the engrossment should be made. I am, therefore, directed by the Senior Registrar to draw attention to the fact that an engrossment copy for this purpose should be made in the same manner as the engrossment formerly annexed to the grant. Matters such as the signature or initials of testator and witnesses at the end of each page of the original will should not be reproduced in the engrossment copy. It should also be borne in mind that a sufficient margin should be left at the top, bottom and sides of the paper used for the purpose of the engrossment to permit the reproduction of the copy will, without reduction of size, within the "frame" of the engrossment annexed to the grant. For this reason it is desirable, but not essential, to use engrossment sheets for the purpose of the engrossment copy.

H. H. H. COATES.

Principal Probate Registry,
Somerset House, London, W.C.2.
31st July.

Mr. GILBERT W. MOSELEY, solicitor, Deputy Clerk of the Peace for Radnorshire, has been appointed Clerk of the Peace and Clerk of the County Council in succession to Mr. Hugh Vaughan Vaughan, solicitor, who is retiring owing to ill-health. Mr. Vaughan will continue to act as legal adviser. Mr. Moseley—who was admitted in 1902—has held the post of Deputy Clerk of the Peace and Deputy Clerk of the County Council for twenty-eight years. He holds the appointments of Clerk to the Radnorshire Assessment Committee and Clerk to the Insurance Committee.

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

On the 11th August, 1869, Lord Justice Selwyn died at Richmond, after a painful operation. He had held judicial office for barely eighteen months, having been raised to the Bench in February of the previous year, while he was serving as Solicitor-General. His modesty and tact were well illustrated when, shortly after his own appointment, Sir William Page Wood, Vice-Chancellor, was promoted to the Court of Appeal to fill a further vacancy. Unwilling to take priority of a judge of fifteen years' experience, Selwyn insisted on retaining the third place in court while the new-comer took the second.

EARLY TO RISE.

At the end of last term Birkett, K.C., abandoned his usual arena for a substantial sojourn in Chancery. During one of his cases there a witness, who was complaining of an early morning factory hooter, asked him, by way of rejoinder, would *he* like to be awakened at 6 o'clock, to which he replied: "I should very much like to be, if you ask the question." Very different is his taste from that of the late Sir Edward Clarke, who while he was a law officer once wrote to his colleague, the future Lord Alverstone, "My dear Attorney, I will do anything in the world for you, but I will not get up in the middle of the night." He had been asked to attend a consultation at 9.30 a.m.

NO OFFENCE MEANT.

On the question of how far shareholders understood balance sheets, Wright, J., suggested to Sir Patrick Hastings, during the *Kylsant Case*, that "you and I could answer that better than Lord Plender." To this counsel replied: "I appreciate that Lord Plender does not associate with such stupid people as you and me." This was dangerously similar to that characteristic reply of Oswald, K.C., to Jessel, M.R., one of whose judgments he had cited. "Surely," protested the Master of the Rolls, "I couldn't have been such a fool as to have said that." "Oh, you were, my lord, you were," was the eager reply.

AUTREFOIS CONVICT.

Recently, Mr. Collingwood Hope, K.C., Chairman of the Essex Quarter Sessions, admitted that forty-nine years ago he had been fined for a criminal offence—riding a cycle on the footpath. This cannot be considered a very serious blot on his character, considering that in the early days of the bicycling craze, races were tolerated within the grave precincts of the Law Courts, the attendants on Sunday duty pedalling about the Central Hall. Bucknill, J., also had a "past," having been for a very short while an inmate of Bosworth Prison. As a boy he had wandered out of bounds and got into the hands of gipsies. To accentuate the lesson his grandfather had confined him for an hour in gaol whence he was released on ticket of leave.

THE FULL COURT.

The Bench seemed unusually crowded when five learned judges sat together to decide when a man ceases to be twenty-three. However, there is room to accommodate several more, and I believe as many as fourteen have been known to sit together. It is told of Lord Morris, who, as Chief Justice of the Common Pleas in Ireland, was an *ex-officio* member of the Court of Appeal, that the Chancellor omitted to invite him to attend a special hearing of an important point under the Land Act of 1881. Meeting the Chief Justice in the street, the Chancellor offered the excuse that there were not enough chairs in the Court of Appeal, to which Lord Morris replied, "Oh, that need make no difference. I'll bring my own chair out of my own court and I'll form my own opinion and deliver my own judgment."

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

General Conditions of Sale—Result of Incorrect Disclosure of Tithe.

Q. 2256. In 1925 A bought a farm by private treaty, following an abortive auction sale, and subject to the auction sale particulars and conditions of sale. The particulars of sale gave the outgoings—tithe so much and land tax so much. Below the particulars of sale occur the following words:—

"The amount of tithe rent-charge and land tax are believed to be correct, and were the amounts paid last year, but the figures are published for guidance only, and their accuracy is not guaranteed."

Among the conditions of sale is the following:—

"The property is believed, and shall be taken to be, correctly described as to quantity and otherwise in the foregoing particulars of sale, and is sold subject to all chief and other rents, rights of way, light and water and other easements, if any, charged or subsisting thereon, and no error, mis-statement or misdescription in the particulars or conditions shall annul the sale, nor shall any compensation be allowed in respect thereof. The vendors shall not be required to procure the legal apportionment of any tithe rent-charge or land tax."

The amount of tithe demanded has, until this year, remained the same as that stated in the particulars of sale. This year, for the first time, a rectorial tithe has been demanded in addition to the tithe formerly paid, and appears to be properly chargeable against this property. What remedies, if any, are open to the purchaser?

A. It appears to us that there is now no remedy open to the purchaser. There was, in fact, no misdescription, and as the purchaser agreed to the conditions of sale as stated we think he is debarred from making any claim now. Presumably this is one of those numerous cases in which tithe has been lying dormant for a long period and is now sought to be enforced. It can only be enforced as regards the last two years, and, we think must be looked upon by the present owner of the land as a new charge in respect of which his predecessor in tithe cannot in any way be made liable.

Payment upon a Monthly Account.

Q. 2257. In many trades it is usual for accounts to be settled on a certain date in the month following the date of the order, payment on or before that date being under discount of 2½ per cent. This is a usual practice, but it is a moot point whether it can be said to amount to an established custom in any trade other than the soft goods trade. The points that are constantly cropping up are where, for some reason, the wholesaler is pressing for his money before the usual date. If he were to issue a writ could the customer claim that the money was not due? Alternatively can the wholesaler sue at all until the "usual" date, or should he sue for his money but less discount?

A. In the present abnormal times, all established customs must be regarded as temporarily in abeyance, but the stage has not yet been reached when all transactions are under an implied agreement to pay what is known as "spot cash." The matter is, therefore, governed by the previous course of business between the parties, in which event the customer would be entitled to plead that the money was not due. The result is that the wholesaler cannot sue at all until the "usual" date, even if the amount claimed is arrived at after allowing discount. In other words, the period of credit does not expire until the "usual" date in the month following the date of the order. In the case of a new customer—if nothing is said, the same rule would apply, but it is apprehended that the wholesaler would usually specify that the transaction is for cash, or make some special terms for payment in less than a month. If not, the opinion is given that even a new customer could plead that the period of credit has not expired, if sued before the "usual" date for payment.

Variation of Terms of Statutory Tenancy.

Q. 2258. A client of ours purchased a house known to be controlled and in the past has paid the rates. She has, however, recently decided, if possible, to reduce the rent and make the tenant responsible for payment of the rates and her agents have served a notice on the tenant accordingly. The tenant demurs to vary the original terms. We have now been consulted and shall be glad to know if the tenant's consent is necessary before any change can be made.

A. The Rent Restriction Acts give no power to a landlord to transfer to a tenant, without his consent, any burden or liability previously borne by the landlord. The Act of 1920, s. 2 (3) merely provides that such a transfer shall be deemed not to be an increase of rent where, as a result, the terms are not less favourable to the tenant than the previous terms. This leaves open the question as to how the matter shall be decided, and therefore (unless the tenant's consent is previously obtained) he may withhold part of his rent, on the ground that there has been an increase which is irrecoverable under the Act. If he in fact pays his rent for a period, there is no estoppel (or ratification by conduct of the fresh terms) and he may claim to recover (at any time within six months) the amount which he alleges to be an excess payment. In practice, therefore, the tenant's consent is necessary to vary the terms. See *Ebner* v. *Lascelles* [1928] 2 K.B. 486.

Tenants in Common—Devise by One of Two to the Other.

Q. 2259. In the year 1919 Blackacre was conveyed to A and B as tenants in common in equal shares. A died on the 14th March, 1931, and by her will devised Blackacre to B. Will any form of assent be necessary to vest the property in B, and should an acknowledgment by the executors of A be incorporated in such assent, if necessary, in respect of the probate of the Will of A?

A. Assuming both shares were free from incumbrances, the legal estate vested in A and B under the transitional provisions upon the statutory trusts, and is now in B. A's executors should assent to the vesting in B of A's undivided moiety of the proceeds of sale and of the income till sale. There is no legal necessity for such assent to be in writing, but as a matter of conveyancing evidence it is advisable. It would also be advisable for B to sign a memorandum which might conveniently be at the foot of the assent or endorsed on the conveyance that, being absolutely entitled in equity as well as at law to the fee simple, he elects to retain the property as real estate. No stamp. It is considered clear that then no court would require B to go through the formality of a conveyance to himself to get rid of the trust for sale under s. 23 of L.P.A., 1925.

Notes of Cases.

High Court—King's Bench Division.

Lord Glanely *v.* Wightman (Inspector of Taxes).

Rowlatt, J. 5th June.

REVENUE—INCOME TAX—HORSE BREEDING—FEES EARNED BY STALLIONS—ASSESSABILITY—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), Scheds. B. and D.

Case stated by the Special Commissioners of Income Tax.

The appellant, Lord Glanely, appealed against an assessment under Sched. D. of the Income Tax Act, 1918, for the year ending the 5th April, 1922, in the sum of £15,000, and two similar assessments for the year ending the 5th April, 1927, in two sums of £2,000 and £13,000. Those assessments were made on the appellant in respect of profits derived from fees paid for the services of his stallions. Lord Glanely was assessed under Sched. B in respect of the land he owned in connexion with his horse-racing and breeding activities. The total number of horses owned by the appellant during the material years varied from about 140 to about 170, of which from four to six were stallions. The appellant's stallions, in addition to serving mares of his own, also served those of other owners from other parts of this country and from abroad. The service fees received increased yearly from £18 18s. in 1918-1919, to £18,586 19s. in 1925-1926. The other owners' mares remained at the appellant's stud farm about four months in all, and they needed careful attention. In addition to the service fees, the appellant received payment for the keep of the mares while at the farm. One set of books of account was kept in respect of the stud farm, racing, training, household, gardens, parks and game. For the year ended the 31st March, 1924, there was a loss of £191,419, for 1924-1925, a loss of £7,207, and for 1925-1926 of £18,534. With the exception of 1919 a heavy loss was always made on the breeding and racing activities. The appellant contended that any profit that he derived from stallion fees was covered by the assessment under Sched. B, Alternatively, the stallion fees could not be treated as a separate subject of assessment, but must be treated as a part of the composite undertaking of breeding and racing horses, which was a concern in the nature of trade, and that inasmuch as there was a loss in that trade the assessments should be discharged. The Crown contended that the letting out of the services of the stallions was carried on on commercial lines, and that the profits derived therefrom were separable from the enterprise as a whole. The Special Commissioners, in confirming the assessments, held that they were bound by *McLaughlin* v. *Bailey* (1920), 2 I.R. 310; 7 Tax Cas. 508. The appellant now appealed.

ROWLATT, J., said that the first question was whether Lord Glanely was not protected by reasons of the fact that the stud farm had already been assessed under Sched. B. The question was whether acts were done on the land which constituted a trade as distinct from the acts constituting the occupation of the land. It had been decided by the House of Lords that as regarded the earnings of animals belonging to the farm, but used for serving females outside, that was a trade. The next question was whether the stallions' fees were to be taken by themselves, or were to be taken with the other side of the stud farm, namely, the appellant's expense of getting his own mares served by outside stallions. Then there was also the wider question whether all the appellant's activities in connexion with horses, including racing, were also to be brought in. It did strike him, his lordship, as rather curious that the earnings of the stallions should be treated apart from the mares, but it had been so regarded in the Irish case, and he thought that he was bound to look at it in that way. Also the Commissioners' findings on the wider question could not be disturbed. The appeal would be dismissed, with costs.

COUNSEL: *Sir John Simon*, K.C., *Wilfrid Greene*, K.C., and *Cyril King* for the appellant; *the Attorney-General* (Sir William Jowitt, K.C.) and *R. P. Hills*, for the Crown; *G. A. Gardiner* held a watching brief.

SOLICITORS: *Gibson & Weldon*, for *Rustons & Lloyd*, Newmarket; *the Solicitor of Inland Revenue; Bull & Bull.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Farra *v.* Hetherington and Others.

Lord Hewart, C.J. 5th June.

MOTOR CAR—INSURANCE—STOLEN—PROPOSAL FORM—NON-DISCLOSURE OF MATERIAL FACTS.

In this action Israel Farra claimed from J. Hetherington and five other Lloyd's underwriters, £600, the agreed value of an Arrol-Aster saloon motor-car insured against loss by a policy dated the 11th December, 1929. The motor-car, which was left outside the London Music Hall, Shoreditch, for three and a half hours on the 26th February, 1930, was stolen. The defendants pleaded that the plaintiff, in the proposal for the insurance, dated the 5th December, 1929, and signed by him, did not disclose the fact that another motor-car belonging to him had been stolen on three occasions. The proposal ended with the declaration: "I hereby declare that the above motor-car is my own sole property and that all the particulars stated above are true, and that no facts have been omitted or any information withheld with which the underwriters should be acquainted. I further agree that this declaration shall be the basis of the contract between us."

Lord HEWART, C.J., said that it was agreed by the policy that the proposal form should be incorporated in the contract. Among the questions contained in the proposal form was the following: "How many accidents or losses have arisen during the past three years in connexion with this or any other motor vehicle owned or driven by you or your driver?" The plaintiff answered: "See your record under policy on Chrysler car." It appeared from the plaintiff's evidence that on no fewer than three occasions a Morris Oxford car, which he had bought in December, 1928, was taken or stolen. On each occasion the car was recovered a few hours later. He, his lordship, thought that that information was material and was information with which the underwriters should have been made acquainted. Judgment for the defendants, with costs.

COUNSEL: *A. S. Diamond*, for the plaintiff; *H. D. Samuels*, for the defendants.

SOLICITORS: *Alexander Rubens and Co.; L. Bingham and Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Simpson *v.* Simpson.

Lord Merrivale, P. 3rd July.

DIVORCE—HUSBAND'S PETITION FOR DISSOLUTION—EVIDENCE—WIFE'S ADMISSIONS TO HUSBAND SOLE EVIDENCE OF ADULTERY—CORROBORATION—DECREE SUBJECT TO PROVISION FOR THE WIFE.

This was a husband's undefended petition for dissolution in which he asked for the discretion of the Court to be exercised in his favour in view of his own adultery while serving in France during the war.

The parties were married in April, 1910. In November, 1919, they parted by mutual consent. The wife left England and eventually became a teacher of music in Berlin. She subsequently admitted to the petitioner orally and in writing that she had committed adultery with a man in Berlin, but steadfastly refused to disclose the man's name in spite of repeated requests. The petitioner having given evidence in support of the petition and of the wife's admissions of adultery, counsel for the petitioner submitted

that the court was in a position to grant a decree upon the respondent's admissions alone, and cited *Getty* v. *Getty* [1907] P. 334.

Lord MERRIVALE, P., in giving judgment, said there was no doubt of the admission of adultery. The question was as to whether it was corroborated. The corroborative fact was that the woman had everything to lose by making that admission and standing by it. Though she had been in a position to insist on her husband maintaining her, that right was thereby lost. That was as strong a corroboration as could be found. There would be a decree *nisi*, not to be made absolute until some provision had been made by the husband to the satisfaction of the court for the respondent, such provision to be subject to a *dum sola et casta* clause.

COUNSEL: *Willis*, K.C., and *William Latey* (with him *Walter Frampton*) for the petitioner.

SOLICITORS: *Reid, Sharman & Co.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Oakes *v.* Uzzell.

Langton, J., sitting with a Common Jury. 3rd and 6th July.

PROBATE—DUE EXECUTION—ACTION FOR REVOCATION—ONE ATTESTING WITNESS MUST BE CALLED BY PARTY PROPOUNDING WILL—CROSS-EXAMINATION, IF NECESSARY, AS OF RIGHT—COSTS.

This was an action for revocation of probate.

The testatrix, a widow, died on 23rd October, 1929, leaving a will dated 17th June, 1925, making her grand-niece, the present defendant, executrix and sole beneficiary of her estate amounting in value to about £7,000. The will was proved in common form on 21st November, 1929. Later, however, inquiries having been made of the two attesting witnesses, they swore in affidavits dated 5th June, 1930, that they did not know when they signed the document whether it was a will or whether it was signed by the testatrix, and that if there was writing on it the whole of it was covered by a silk handkerchief and there was only a blank space in which they signed their names. On 24th November, 1930, the plaintiff, a niece of the testatrix, issued a writ claiming revocation of probate, on the ground that the will was not duly executed. The defendant asked for probate of the will in common form. The defendant, who was present at the execution, gave evidence of it, and other evidence was called in support of the will. A question having arisen as to the right of a party calling one of the attesting witnesses to cross-examine that witness, counsel for the defendant submitted that although bound to call one of the attesting witnesses (see *Bowman* v. *Hodgson* (1867), 1 P. & M. 362), if such witness gave evidence, against the will, he might cross-examine him and might call evidence in disproof and to show he had made inconsistent statements, although he was not a hostile but merely an adverse witness, the witness being a witness of the court and not of either party (see *Jones* v. *Jones* (1908), 24 T.L.R. 839).

LANGTON, J., ruled that such witness could be cross-examined by the party calling him or her if necessary, and an attesting witness was then called on behalf of the defendant and cross-examined upon the affidavit she had sworn. The other attesting witness was called on behalf of the plaintiff.

The learned judge having summed up, the jury found that the will had been duly executed, and the will was pronounced for accordingly.

In argument as to costs, counsel for the defendant cited, *inter alia*, *Blake* v. *Knight* (1843), 3 Curteis 547.

LANGTON, J., in disallowing the plaintiff her costs out of the estate, said that the action was based upon "a horrible technicality."

COUNSEL: *Elliot Gorst*, for the plaintiff; *Bayford*, K.C., and *H. D. Grazebrook*, for the defendant.

SOLICITORS: *W. J. & W. F. Hellyar; Fairfoot & Co.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Societies.

Manchester Law Society.

The annual meeting of the Manchester Law Society was held in Manchester, on 21st July, 1931, Mr. Frederick Stancliffe (the President) occupying the chair.

The report of the Council dealing with a large number of questions which had engaged its attention during the past year contained a reference to the services of Mr. S. F. Butcher, the Senior Ex-President on the Council, who had intimated his wish not to stand for re-election. Mr. Butcher, who has now completed fifty years of practice, became a member of the Society in 1888, and served on the Council from 1890 to 1894, and from 1903 to the present time. He was Vice-President in 1908 and President in 1909, and had been Convener of the Judicature Committee since July, 1929. The Council had received Mr. Butcher's intimation with profound regret and had passed a resolution recording its sincere appreciation of his services to the Society in various capacities and of the loyal and high-minded attitude which had characterised all his activities during his forty-three years of membership. The Council was particularly indebted to him for the great amount of work and trouble which he had recently ungrudgingly expended on the co-ordination and preparation of the report of the Society's Judicature Committee on the cost of litigation, which, by the courtesy of The Law Society, had been printed in the June issue of *The Law Society's Gazette*.

PRESIDENT'S ADDRESS.

The President, in addressing the meeting, emphasised the importance of the Society keeping in touch with the Manchester Chamber of Commerce, as an interchange of views from time to time on matters of common interest could do nothing but good.

As to the cost of litigation the subject, he said, was full of difficulty, but one in which they all ought to take an interest, even though they might feel quite satisfied in their own minds that so far as solicitors were concerned they were not overpaid for the work which they did.

Litigants were sometimes painted in somewhat false colours. Some critics would have one believe that the litigant was simply and solely a seeker after speedy justice, whether the result be for or against him. This might be a true picture in some cases, but he ventured to think that in most cases the weaknesses of human nature played a much larger part than such a picture would lead one to suppose. Ill-will, obstinacy, lack of candour, undue insistence on technical rights and other such things had a very big bearing on the cost of litigation. He thought the profession was sometimes at fault in not making more use of the rules relating to the admission of facts and documents. A more serious use and probably a strengthening of these rules would help considerably to reduce the cost of evidence.

As to the rent and mortgage interest restrictions, he hoped that the efforts to extend them would be frustrated. As solicitors, they must have all experienced cases of hardship and inconvenience caused by the inability to call in or realise mortgages which had already run for longer than their allotted span. The profession had repeatedly urged that so far as mortgages were concerned the restrictions should be abolished at once.

As regards rents, their immediate and entire abolition would doubtless lead to some very hard cases, but the transitional provisions of Pt. II of the Rent and Mortgage Interest Restrictions Act, 1923, would be ample protection in such cases, the tenant being given a right to apply to the court if he thought he was being hardly dealt with.

LAND VALUE TAX.

Part III of the Finance Bill, which dealt with the proposed land value tax, he contended, would mainly result in putting money into the pockets of the legal profession, land agents and surveyors. To enable the Commissioners to compile their valuations and registers they had, of course, to be empowered to require information and returns from owners and occupiers, and cl. 27 of the Act would release a flood of revised editions of the famous Form 4 with which they were harassed by Mr. Lloyd George twenty years ago.

The conveyancing committee of the Council had been unable to follow the principle underlying the proposed tax. Not only members of the public but members of Parliament were still in considerable doubt as to whether the real object of the Bill was to raise revenue, to tax increment value, to force undeveloped land into development, to pave the way for the rating of site values, to encourage the transfer of land from individual owners to public bodies, or to confiscate from the individual an asset which was alleged to have been provided by the Divine Creator for the people at large. In his (the President's) opinion neither the imposition of the tax

nor the exemptions from it were founded on any apparent principle of logic or justice, and they were driven to the conclusion—and in fact the Chancellor of the Exchequer had admitted—that what he wanted for the moment was a valuation, and that anything else was of little importance, as the valuation would be the foundation-stone on which future Governments would build up a new system of taxation and rating.

The general public would be most concerned with clause 34 of the Bill, as it provided that the expenses incurred by the Commissioners and the Referees were to be paid out of moneys provided by Parliament. That might very rightly be interpreted as a prophecy—and in all probability a true prophecy—that the value of the harvest would be insufficient to provide the wages of the harvesters.

In conclusion, he thanked the members of the Council for the assistance they had rendered him during his term of office.

The following officers were elected for the ensuing year :—

President : Mr. Arthur Reginald Moon.

Vice-President : Mr. John Walter Robson.

Hon. Treasurer : Mr. William Edward Mackenzie Mainprice.

Hon. Secretary : Mr. Allison Howard Goulty.

Legal Notes and News.

Honours and Appointments.

Mr. EDWARD HAINES, solicitor, Southport, has been appointed Assistant Solicitor in the office of Mr. Charles L. des Forges, M.B.E., solicitor, Town Clerk of the County Borough of Rotherham. Mr. Haines was admitted in 1928.

Mr. T. A. URWIN, solicitor, Darlington, has been appointed Assistant Solicitor in the office of Mr. James W. Rothwell, C.B.E., solicitor, Town Clerk of the City of Bristol.

Professional Partnerships Dissolved.

J. CHAPMAN-WALKER and H. SHEPHARD, solicitors, 25, Dover-street, Westminster, under the style of "Chapman-Walker & Shephard."

Wills and Bequests.

Mr. Ernest Swain, of Surbiton, late Chief Clerk, Southwark County Court, left estate of the gross value of £8,891, with net personalty £7,890.

Colonel John James George, D.L., solicitor, of Macduff, Banffshire, left personal estate of the gross value of £13,106.

FOUR SOLICITORS STRUCK OFF THE ROLL.

ANOTHER SUSPENDED.

A meeting of the Committee of The Law Society, constituted under the Solicitors Acts, 1888 and 1919, was held on Thursday, the 23rd July, at the Society's Court Room, Carey-street, W.C. Mr. Pinsent presided, and the other members present were Sir Reginald Poole and Mr. Holme. The committee pronounced their findings and orders in the following cases :—

Mr. Dennis Arthur Harrison, formerly of Croydon, who was convicted at Croydon Police Court of embezzlement and sentenced to six months' imprisonment in the second division, was adjudged guilty of misconduct and ordered to be struck off the Roll.

Mr. John Arnold Haughton, formerly of Manchester, Bolton, and Horwich, Lancs, who was sentenced to four years' penal servitude at Manchester Assizes for forgery and fraudulent conversion, was adjudged guilty of misconduct and struck off the Roll.

Mr. John Humphreys Mockridge, formerly of 2, Green Man-lane, West Ealing, Middlesex, was adjudged guilty of professional misconduct in using for his own purposes sums received on behalf of clients and was ordered to be struck off the Roll.

Mr. George Abram Kellett, of 50, Cleveland-avenue, Chiswick, was found guilty of professional misconduct in three respects and was ordered to be struck off the Roll.

Mr. John Lee Bromley Williams, of 23, Essex-street, Strand, W.C., was adjudged guilty of professional misconduct, and was suspended from practice for six months, for failing to discharge his duty as executor of an estate.

VALUATIONS FOR INSURANCE. It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is frequently very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac, a speciality. 'Phone: Temple Bar 1181-2.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th July, 1931) 4½%. Next London Stock Exchange Settlement Thursday, 13th August, 1931.

	Middle Price 5 Aug. 1931.	Flat Interest Yield.			Approximate Yield with redemption		
English Government Securities.		£	s.	d.	£	s.	d.
Consols 4% 1957 or after	90	4	8	11	—		
Consols 2½%	57	4	7	9	—		
War Loan 5% 1929-47	101⅜	4	18	3	—		
War Loan 4½% 1925-45	100	4	10	0	4	10	0
Funding 4% Loan 1960-90	93	4	6	0	4	6	6
Victory 4% Loan (Available for Estate Duty at par) Average life 35 years	95	4	4	3	4	5	3
Conversion 5% Loan 1944-64	105	4	15	3	4	14	6
Conversion 4½% Loan 1940-44	100	4	10	0	4	10	0
Conversion 3½% Loan 1961	80	4	7	6	—		
Local Loans 3% Stock 1912 or after	67	4	9	7	—		
Bank Stock	257½	4	13	2	—		
India 4½% 1950-55	75	6	0	0	6	11	0
India 3½%	56½	6	3	11	—		
India 3%	47	6	7	8	—		
Sudan 4½% 1939-73	100	4	10	0	4	10	0
Sudan 4% 1974	93½	4	5	7	4	7	0
Transvaal Government 3% 1923-53 (Guaranteed by Brit. Govt. Estimated life 15 yrs.)	87½	3	8	7	3	17	0
Colonial Securities.							
Canada 3% 1938	92	3	5	3	4	6	9
Cape of Good Hope 4% 1916-36	97	4	2	6	4	14	0
Cape of Good Hope 3½% 1929-49	85	4	2	4	4	15	0
Ceylon 5% 1960-70	102	4	18	0	4	17	8
*Commonwealth of Australia 5% 1945-75	76½	6	10	9	6	13	4
Gold Coast 4½% 1956	100	4	10	0	4	10	0
Jamaica 4½% 1941-71	99	4	10	11	4	11	0
Natal 4% 1937	97	4	2	6	4	11	6
*New South Wales 4½% 1935-1945	62	7	5	2	8	0	6
*New South Wales 5% 1945-65	67	7	9	3	7	10	5
New Zealand 4½% 1945	91xd	4	18	11	5	9	0
New Zealand 5% 1946	99½	5	0	6	5	1	0
Nigeria 5% 1950-60	102	4	18	0	4	17	6
*Queensland 5% 1940-60	72	6	18	11	7	8	0
South Africa 5% 1945-75	104	4	16	2	4	15	6
*South Australia 5% 1945-75	74	6	15	2	6	16	0
*Tasmania 5% 1945-75	77½	6	9	0	6	12	6
*Victoria 5% 1945-75	70	7	2	10	7	6	0
*West Australia 5% 1945-75	76	6	11	7	6	14	6
Corporation Stocks.							
Birmingham 3% on or after 1947 or at option of Corporation	65	4	12	4	—		
Birmingham 5% 1946-56	104	4	16	2	4	14	6
Cardiff 5% 1945-65	103	4	17	1	4	16	6
Croydon 3% 1940-60	76	3	18	11	4	10	0
Hastings 5% 1947-67	103	4	17	1	4	16	6
Hull 3½% 1925-55	84	4	3	4	4	12	3
Liverpool 3½% Redeemable by agreement with holders or by purchase	77	4	10	11	—		
London City 2½% Consolidated Stock after 1920 at option of Corporation	55½xd	4	10	1	—		
London City 3% Consolidated Stock after 1920 at option of Corporation	65½xd	4	11	7	—		
Metropolitan Water Board 3% "A" 1963-2003	67½	4	8	11	—		
Do. do. 3% "B" 1934-2003	67½xd	4	8	11	—		
Middlesex C.C. 3½% 1927-47	88	3	19	7	4	11	3
Newcastle 3½% Irredeemable	74	4	14	7	—		
Nottingham 3% Irredeemable	66	4	10	11	—		
Stockton 5% 1946-56	102	4	18	0	4	17	6
Wolverhampton 5% 1946-56	104	4	16	2	4	14	6
English Railway Prior Charges.							
Gt. Western Rly. 4% Debenture	83	4	16	5	—		
Gt. Western Railway 5% Rent Charge	101	4	19	0	—		
Gt. Western Rly. 5% Preference	81½	6	2	8	—		
L. & N.E. Rly. 4% Debenture	72	5	11	1	—		
L. & N.E. Rly. 4% 1st Guaranteed	65	6	3	1	—		
L. & N.E. Rly. 4% 1st Preference	40	10	0	0	—		
L. Mid. & Scot. Rly. 4% Debenture	74	5	8	1	—		
L. Mid. & Scot. Rly. 4% Guaranteed	65½	6	2	2	—		
L. Mid. & Scot. Rly. 4% Preference	41	9	15	0	—		
Southern Railway 4% Debenture	77½	5	3	3	—		
Southern Railway 5% Guaranteed	98	5	2	0	—		
Southern Railway 5% Preference	77	6	9	10	—		

*The prices of Australian stocks are nominal—dealings being now usually a matter of negotiation.

EX-OFFICERS.

THE Proprietors of The Solicitors' Journal have placed this space at the disposal of THE BRITISH LEGION OFFICERS' ASSOCIATION, EMPLOYMENT BUREAU, 3-4, Clement's Inn, Strand, London, W.C.2 (Telephone Holborn 5769), to whom all replies should be addressed, quoting number of advertisement, date of insertion and the name of this paper.

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SOLICITOR, busy London practice, has vacancy for Articled Pupil; excellent prospects; premium.—Write Box, 802, Solicitors' Journal, 29, Breams-buildings, E.C.4.

PRACTICES AND PARTNERSHIPS.

COLONIAL Firm practising in East Africa would entertain applications for purchase of share in partnership.—Particulars in confidence, Box 807, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR, 37, Oxford Graduate, C.O., of wide experience in conveyancing, company, trust and family business, seeks partnership yielding £1,000 to £2,000 per annum net in well-established firm in Liverpool.—Box 770, Solicitors' Journal, 29, Breams-buildings, E.C.4.

YOUNG Solicitor, admitted 1930, desires Junior Partnership in general practice after short preliminary clerkship. Experienced in conveyancing, probate and general country practice, including some advocacy. Capital available.—Box 737, Solicitors' Journal, 29 Breams-buildings, E.C.4.

SOLICITOR (31), formerly a member of the Bar, desires to purchase partnership in well-established firm in London or Southern Counties; thorough general experience in London and provinces; capital available.—Box 686, Solicitors' Journal, 29, Breams-buildings, E.C.4.

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BOOKS AND PUBLICATIONS.

FOR SALE.—Bound Volumes of "Punch," 1879, 1880 and 1881, "Judy," 1877, 1877-8, 1879, 1880 and 1881, and "Fun," 1877, 1878, 1880 and 1881. What offers?—Replies to "Insurance," Box 811, Solicitors' Journal, 29, Breams-buildings, E.C.4.

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MRS. MAUD DRUMMOND, formerly of 6, Lincoln-street, Sloane-square, S.W.3, understood to have been a nurse at Hawick, N.B., during the war, or anyone knowing of her whereabouts, please write to J. C. and A. Steuart, W.S., 25, Rutland-street, Edinburgh.

IF NELLIE GRACE WILSON, last heard of nine years ago at 54, Park-street, East Greenwich, S.E.10, will COMMUNICATE with Messrs. Stephens & Son, Solicitors, 41, Railway-street, Chatham, Kent, she will hear of something to her advantage.

BOISRAGON, deceased.—COL. GUY HUDLESTON, V.C.—Will anyone having KNOWLEDGE of existence or whereabouts of a WILL or TESTAMENTARY DOCUMENTS or any other papers relating to this gentleman's affairs please COMMUNICATE immediately with Messrs. Finch, Jennings & Tree, 2, Gray's Inn-square, W.C.2.

MRS. ADA LATCHAM, deceased.—Will any Solicitor or other person having any KNOWLEDGE of any WILL made subsequent to the 28th January, 1904, by the above-named deceased, late of 3, Seavale-road, Clevedon, Somerset, who died on the 18th March, 1931, please communicate with Messrs. WEBBER & BULL, Solicitors, 34, Baldwin-street, Bristol.

THOMAS HODGSON, deceased, late Solicitor of Birmingham, died 31st March, 1891.—INFORMATION is desired as to the present addresses of two Grandchildren of the above, viz., MAGGIE HODGSON and HERBERT JOHNSON, by Messrs. Donaldson & Co., of 4 Bloomsbury Place, London, W.C.1, Solicitors on behalf of the Executor of Miss I. E. BARDSWELL, deceased.

COLLINS-CECIL, BEATRICE MARY.—The before-named Beatrice Mary, *nee* Gregg, of Sutton, Surrey, formerly the wife of Alfred John Toppin, who resided at Earls-avenue, Folkestone, and Goxhill, Lincs. and who is believed to have gone to Australia in or about 1920, is requested to COMMUNICATE with Edwin Boxall and Kempe, Solicitors, 63, Ship-street, Brighton, when she will hear something to her advantage.

MORRISON.—JAMES MORRISON, formerly of 61, Saint Paul's-street, New North-road, Middlesex, England, and late of Sydney, New South Wales, Australia, died on or since the 25th August, 1863, at some place unknown, leaving a paper writing purporting to be a WILL and to have been executed in three parts, whereby he appointed his wife MARGARET MORRISON (otherwise ALPORT), ALEXANDER MORRISON, of Austin Friars, London, England, ALEXANDER JOHN FRASER, of Pinners-court, London, EDWARD CRUCKNELL SANDY, and Mr. (A. J.) ALPORT, of Canterbury, New Zealand, Executors, and the said Margaret Morrison residuary legatee.—These persons or anyone having any information with regard to them or any part of the said paper writing should COMMUNICATE forthwith with the Treasury Solicitor (B.V.), Storey's-gate, London, S.W.1.

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